

REMARKS

In the Office Action mailed from the United States Patent and Trademark Office on May 7, 2006, the Examiner rejected claims 1-3, 5 and 9 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. The examiner also rejected claims 1 and 2 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,035,403 to Subbiah et al. (hereinafter “Subbiah”), rejected claim 3, under 35 U.S.C. § 103(a) as being unpatentable over Subbiah in view of U.S. Patent No. 5,229,764 to Matchett et al. (hereinafter “Matchett”). Finally, the Examiner rejected claim 5 under 35 U.S.C. § 103(a) as being unpatentable over Subbiah in view of Matchett in view of U.S. Patent No. 6,748,540 to Canestaro et al. (hereinafter “Canestaro”), rejected claims 9 and 11 under 35 U.S.C. 103(a) as being unpatentable over Subbiah US 6,035,403 in view of Stevens US 7,013,393, rejected claims 10, 12-14 under 35 U.S.C. 103(a) as being unpatentable over Subbiah US 6,035,403 in view of Kinsella US 6,947,580. Accordingly, Applicant respectfully provides the following:

Rejections under 35 U.S.C. § 112, first paragraph:

The Examiner rejected claims 1-8 as containing subject matter not described in the specification in such a way as to reasonably convey to one skilled in the art that the inventor, at the time the application was filed, had possession of the claimed invention. Applicant has amended claims 1-3 to remove the language referred to by the examiner, and has cancelled claims 4 and 6-8. Claim 5 depends on claim 3 and was rejected merely for containing the same subject matter as claim 3 through dependency and is thus now allowable.

The amendments to the claims are supported by the specification as originally filed, and Applicant submits that the amendments to the claims and new claims add no new matter.

Rejections under 35 U.S.C. § 102(e):

In the Office Action, the Examiner rejected claims 1 and 2 under 35 U.S.C. § 102(e) as being anticipated by Subbiah. “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.”

Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Applicant has amended the claims to more distinctly set forth the novel features of the claimed invention and submits that the claims as amended are not anticipated by Subbiah.

Particularly, Applicant has amended claim 1 to require that the software interface is independent and capable of being imposed on an operating system or on an individual software application. Subbiah does not teach that an independent software interface that is capable of being imposed on an operating system or on an individual software application. Instead, Subbiah teaches an access limiting procedure that is integral to and inseparable from a software application. (Col. 5 lines 1-17) In fact, Subbiah specifically teaches that the process is “embedded in the executable version of the distributed code” at the point of purchase. (Col. 5 lines 11-17) Thus, the claimed invention has an advantage over Subbiah of allowing a computer user to protect access to his or her software or operating system even if the software or operating system as originally purchased did not allow such protection, a feature notably missing from the teachings of Subbiah.

New claims 9 and 10 add additional limitations to claim 1, pointing out additional benefits of the claimed invention not taught by the cited art, as will be referenced below in discussing the rejections under 35 U.S.C. § 103(a).

Applicant has similarly amended claim 2 to require an additional step of providing an independent software interface capable of being imposed on an operating system or on an individual software application. By similar reasoning, it is clear that Subbiah does not teach this novel limitation of the claimed invention. New claims 11-14 add further limitations to claim 2, pointing out additional benefits of the claimed invention not taught by the cited art, as further discussed below.

For the foregoing reasons, Applicant respectfully submits that the rejection of claims 1 and 2 under 35 U.S.C. § 102(e) has been overcome and respectfully requests removal of the rejection.

Rejections under 35 U.S.C. § 103(a):

In the Office Action, the Examiner rejected claims 3-4 and 6-8 under 35 U.S.C. 103(a) as being unpatentable over Subbiah in view of Matchett, and rejected claim 5 as being unpatentable over Subbiah in view of Matchett in view of Canestaro. Applicant respectfully submits that the claim set as provided herein is not made obvious by the cited references.

The standard for a Section 103 rejection is set forth in M.P.E.P 706.02(j), which provides:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the references or combine reference teachings. Second, there must

be a reasonable expectation of success. Finally, **the prior art reference (or references when combined) must teach or suggest all the claim limitations.** The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). (Emphasis added).

Applicant respectfully submits that the references cited by the Examiner do not teach or suggest the limitations claimed in the present invention, as presently amended. In particular, independent claims 1-3 have been amended to include an independent software interface capable of being imposed on an operating system or on an individual software application. None of the references cited by the Examiner teach or suggest such a limitation.

Subbiah teaches a completely-integrated and dependent biometric authentication process that is inseparable from the application software in which it is incorporated. (Col. 5 lines 1-17). This is clearly not the independent software interface claimed in the claims and taught by the specification as originally filed. (Page 6 line 24-page 7 line 11) Matchett teaches a system that is extraordinarily robust and overly intrusive that requires that requires major changes to the computer system itself and focuses on continuous testing not applicable to the current invention. (See Abstract). Canestaro merely teaches a file that contains a record of the identification and password attempts used to access a system and processing of that information to discover patterns that might identify those attempting illicit access. (Col. 2 lines 12-18).

The remaining claims are dependent from claims 1-3 and are at least allowable for the same reasons. Note, also, that claims 4 and 6-8 have been cancelled. In particular, claim 5 has been amended to include similar limitations to those in new claims 10 and 12-14 referring to the storage of the biometric signal of the attempted user beyond a period of time necessary to merely make a comparison between the acquired signal and the baseline signal to permit attempted

identification of the inappropriate user. This information is supported by the specification as originally filed. (Page 8 lines 7-14)

Subbiah does not teach storing the biometric signal for this length of time. Instead, Subbiah specifically teaches that the process ends after the comparison is made. (Col. 5 lines 26-32) Furthermore, Canestaro lacks the benefit of simplicity of identification provided by the instant invention through the storage of the biometric as a clear identifier, instead teaching a cumbersome process relying intensive analysis of login identification and passwords attempts saved in a database of logon attempts. (Col. 5 line 65-Col. 6 line 33) Even then, the process merely identifies candidate usernames and locations of attempts, (Col. 6 lines 28-33) while the present invention has the benefit of allowing a direct comparison and identification through the stored biometric.

Accordingly, Applicant respectfully submits that for at least the reasons provided herein, the references cited by the Examiner, alone or in combination, do not teach or suggest all the claim limitations. And, since the references cited by the Examiner do not teach or suggest each and every limitation of the independent claims, Applicant respectfully submits that the prior art references do not make obvious independent claims 1-3 as provided herein. And since the prior art references do not make obvious independent claims 1-3, Applicant respectfully submits that the prior art references cited by the Examiner do not make obvious the corresponding dependent claims 5 and 9-14 which depend from independent claims 1-3.

Thus, Applicant respectfully submits that for at least the reasons provided herein, the claim set as provided herein overcomes all rejections made by the Examiner in the Office Action.

CONCLUSION

Applicant submits that the amendments made herein do not add new matter and that the claims are now in condition for allowance. Accordingly, Applicant requests favorable reconsideration. If the Examiner has any questions or concerns regarding this communication, the Examiner is invited to call the undersigned.

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Respectfully submitted,

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